

REMARKS

Claims 1 and 3-11 remain pending. Claims 1, 8 and 9 were amended slightly to more succinctly claim the invention. Reconsideration is respectfully requested.

Claim 1 was objected to due to informal matters. The Examiner objected to the use of the word "such" and the redundant occurrence of word "the." It is respectfully submitted that the above amendment of claim 1 cures such informalities.

Claims 1 and 3-11 were rejected under 35 U.S.C § 112:

Claim 1 was rejected due to the use of the term "capable of." It is respectfully submitted that the case relied upon by the Examiner (In re Hutchinson, 69 U.S.P.Q. § 138) refers to the use of the term "adapted for use" **in the introductory clause** of the claim as not constituting a limitation. Nonetheless, claim 1 was amended to delete such term.

Claim 1 was rejected as being incomplete for omitting essential elements, and more specifically, the omission of a "controller/electrical controller." Applicant respectfully traverses. It is respectfully submitted that there are many elements that are essential to the operation of an internal combustion engine (e.g. pistons, cylinders, crankshaft, etc.) that are not the focus of the present invention and consequently are not claimed herein. Similarly, because the focus of the present invention is not on **how** the valve operating means is controlled, but rather, the configuration of valves, turbochargers and the routing therebetween that enables the system to be operated in at least three different operating modes, the identification of a particular controller is not essential. No specific control means was disclosed in the specification as being **essential** to the invention as is required by MPEP 2172.01 in order to require its inclusion in the claims. At page 4, line 20 it is only disclosed that valves **can** be controlled by an engine management system. It should be noted that many different systems are well known and in fact currently used to control valve operation, including systems that do not rely on any electronic controls such as those that rely simply on oil pressure. As such, it is respectfully submitted that the claimed "valve means for controlling operation" is not intended to limit the invention to any particular type of controller and that the absence of the identification of a particular type of controller does not thereby render the claim "incomplete" as is asserted by the Examiner.

Claim 1 was additionally rejected as failing to identify "the condition of the engine" in which the various operating modes are selected. Applicant respectfully traverses. The specific conditions under which the various operating modes are selected is again beyond the purview of the present invention. At page 4, line 21-22 of the specification mere **examples** of parameters are identified that may be relied upon. While the claimed system has the capability to operate in any of the described modes, it is up to a user of the system to determine which parameters are of importance and under which conditions or combination of conditions a particular mode of operation is to be selected. Moreover, different engines, different states of tune and different operating requirements call for different criteria for use in selecting an appropriate operating mode. As such, it is not in any way intended to limit the present invention to any particular conditions under which the various operating modes are to be selected. It is therefore respectfully submitted that the claim is not in any way incomplete.

Claim 10 was rejected for lack of antecedent basis for 'the' electrical controller. It is respectfully submitted that the above amendment of the claim cures such informality.

The finding of allowable subject matter in all pending claims is gratefully acknowledged.

In light of the above amendments and remarks, applicant earnestly believes the application to now be in condition for allowance and respectfully requests that it be passed to issue.

Respectfully submitted,

FULWIDER PATTON LLP

/GUNTHER O. HANKE/

Gunther O. Hanke, Reg. No. 32,989

GOH:lm